

REMARKS/ARGUMENTS

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and the following remarks are presented for the Examiner's consideration.

New claims 6-25 have been added by amendment herein.

Claims 1-5 stand rejected under 35 U.S.C. 103(a) over U.S. Patent No. 6,587,684 to Hsu et al. (hereinafter "Hsu") in view of U.S. Patent Application Publication No. 2002/0065066 A1 to Takagaki (hereinafter "Takagaki") and in further view of U.S. Patent No. 6,073,075 to Kondou et al. (hereinafter "Kondou et al."). Applicants have previously submitted arguments relating to insufficient motivation for combining the references used in forming the present rejection. Applicants maintain this position, but arguments will not be restated herein for the sake of brevity. For the following additional reasons, Applicants again respectfully traverse the rejection.

It is respectfully submitted that, even if the cited references were combined as set forth in the rejection, every limitation of claim 1 would not be taught or suggested by the resulting combination. In particular, neither Hsu nor Takagaki nor Kondou, alone or in combination, teaches or suggests a portable telephone including "a storage means which stores music data," and "instructing means which instructs the server *to download the application software corresponding to a music data format defined in connection with the music data,*" as required. According to claim 1, the particular application software to be downloaded must correspond to a music data format of the music data. For example, according to the claimed invention, if music data encoded in the MP3 music data format is stored in the telephone's storage means, then the instructing means would instruct the server to download an application software capable of decoding MP3 music data. Likewise, if the music data were encoded in a Quicktime data format, for example, the instructing means would instead instruct the server to download an application

software for decoding Quicktime encoded music data. None of the cited references teach or suggest such an instructing means.

The Hsu patent merely teaches downloading software applications based on a user's instructions. The Takagaki patent teaches a mobile communication apparatus capable of downloading and reproducing music. The Kondou patent is cited by the Examiner for teachings related to recording a download history. However, none of these references recognizes the concept of downloading application software *based on a music data format of stored music data*. Of these three cited references, the only teachings relating to downloading application software can be found in Hsu. However, Hsu teachings are very different from that of the presently claimed invention. Whereas Hsu downloads software applications based on *instructions provided by a user*, the presently claimed invention, as set forth in claim 1, downloads software based upon instructions *provided by an instructing means* that looks to a data format of stored data to formulate its instructions. Thus, even if Hsu were modified to include the music-related teachings of Takagaki, the resulting combination might suggest downloading software applications that reproduce music, but the downloads would still only be based on a user's instructions, since there is no teaching or suggestion of an instructing means that instructs downloading on the basis of data format. If it is Examiner's contention that such a instructing means was well known in the art at the time the present invention was made, Applicant respectfully requests that the Examiner provide some documentary evidence to that effect.

Based on the prior art presently made of record, each and every limitation of claim 1 is not taught or suggested by Hsu, Takagaki, Kondou or any possible combination thereof. Thus, claim 1 and its dependent claims 2-5 are patentable over the prior art of record. Therefore, reconsideration of claims 1-5 is respectfully requested.

In light of the foregoing, it is respectfully submitted that the present application is in a

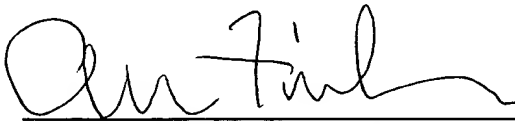
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condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 32893.

Respectfully submitted,

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